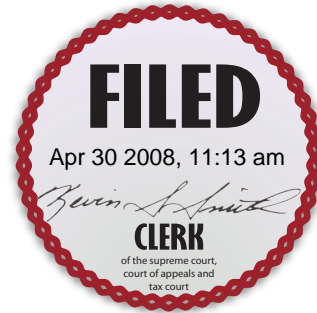


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

PHILLIP COLLINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0709-CR-823

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0604-FC-68613

April 30, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Phillip Collins's ("Collins") probation was revoked in Marion Superior Court and the trial court ordered him to serve his previously suspended four-year sentence in the Indiana Department of Correction. Collins appeals and argues that the State failed to prove that he violated his probation and that the court abused its discretion when it ordered him to serve his previously suspended four-year sentence. We affirm.

Facts and Procedural History

In 2006, Collins pleaded guilty to Class C felony child exploitation. He was sentenced to serve four years, and the entire sentence was suspended to probation. On March 16, 2007, a notice of probation violation was filed, which alleged that Collins had violated the condition of his probation that he was not to have contact with any child under the age of eighteen. Specifically, the State alleged that Collins, who lived in one half of a double while his wife and six-year-old child resided in the other half, had video equipment set up providing him with the ability to videotape his daughter. At the probation revocation hearing, the court concluded that Collins had not violated his probation, but amended his probation conditions to include that he must live outside of a mile radius of his daughter and could not possess cameras.

On July 16, 2007, the State filed a second notice of probation violation alleging that Collins possessed a camera and alcohol. On August 3, 2007, the State filed an amended notice of probation violation and added a third allegation: Collins "was unsuccessfully terminated from the sex offender treatment program." Appellant's App. p. 53. The notice also alleged, "Mr. Collins had been previously placed under zero tolerance with the agency regarding his conduct and verbally warned on 6/20/07 not to

display his hostility towards staff or risk termination.” Id. A third amended notice was filed shortly thereafter and the State alleged that Collins “violated the no contact order with minor children,” “failed to maintain a single, verifiable residence,” and “failed to register accurately with law enforcement for the purpose of sex offender registration.” Id. at 54.

On August 23, 2007, a hearing was held on the alleged probation violations. The trial court revoked Collins’s probation after finding that Collins violated his probation by possessing a camera, being unsuccessfully terminated from the sex offender treatment program, violating the no contact order with a minor, and failing to maintain a single verifiable residence. Tr. pp. 76-77. Therefore, the court ordered Collins to serve his previously suspended four-year sentence in the Department of Correction. Collins now appeals.

I. Probation Revocation

Collins argues that the State presented insufficient evidence to support the revocation of his probation. A defendant is not entitled to probation, but rather such placement is a matter of grace and a conditional liberty which is a favor, not a right. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). A probation revocation hearing is in the nature of a civil proceeding, and therefore, a violation need only be proven by a preponderance of the evidence. Thornton v. State, 792 N.E.2d 94, 96 (Ind. Ct. App. 2003). “It is well settled that violation of a single condition of probation is sufficient to revoke probation.” Gosha v. State, 873 N.E.2d 660, 663 (Ind. Ct. App. 2007).

We review a trial court's decision to revoke probation for an abuse of discretion. Jones, 838 N.E.2d at 1148. Upon review of the trial court's decision to revoke probation, we will consider only the evidence most favorable to supporting the trial court's judgment without reweighing that evidence or judging the credibility of witnesses. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id.

Collins argues that State failed to prove that he was unsuccessfully terminated from the sex offender treatment program. At the probation revocation hearing, the following exchanged occurred:

COURT: And then you also admit that you were unsuccessfully terminated from your –from your sex offender treatment?

COLLINS: I was informed of that by Probation during the week that I was –they say I wasn't livin' at my house. I can get back into [] therapy. I was explained some things.

COURT: Why were you put out of your therapy?

COLLINS: For questioning the integrity of the program.

Tr. pp. 68-69. Collins's own admission that he was terminated from his sex offender treatment program is sufficient to establish that he violated his probation.

Next, Collins asserts that the evidence was insufficient to establish that he violated the "no contact with minor children" condition of his probation. To prove this violation, the State presented evidence that while Collins's wife and child were visiting Indiana, Collins resided in a motel room for over a week. When the officers discovered him in the motel room, there were numerous children's toys present. From this evidence, the trial court concluded that it was "more likely than not" that Collins had contact with his minor

daughter. Collins's argument that he did not have any contact with his daughter is simply an invitation to reweigh the evidence and credibility of the witnesses, which our court will not do.

The State also alleged that Collins failed to maintain a single verifiable residence because he resided in the motel room for over a week while his wife and daughter visited the state. Collins's argument that he only stayed in the motel room during the day is simply an invitation to reweigh the evidence and credibility of the witnesses.

Finally, the trial court found that Collins violated his probation by possessing a camera. A police officer discovered the camera in Collins's motel room. Collins's argument that the camera was his wife's is simply an invitation to reweigh the evidence and the credibility of the witnesses.

For all of these reasons, we conclude that the State presented sufficient evidence to establish that Collins committed the four probation violations discussed above.

II. Collins's Sentence

Collins also argues that the trial court abused its discretion when it ordered him to serve his previously suspended four-year sentence in the Department of Correction. Specifically, he claims that his "minor" probation violations do not justify imposition of his entire four-year sentence.

We review a trial court's sentencing decision in a probation revocation proceeding for an abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005). "A defendant may not collaterally attack a sentence on appeal from a probation revocation." Id. As we have observed on numerous occasions, a defendant is not entitled

to serve a sentence in a probation program; rather, such placement is a matter of grace and a conditional liberty that is a favor, not a right. Id. Upon finding that a person violated a condition of probation, the trial court may continue probation, extend the probationary period for not more than one year beyond the original probationary period, or “order execution of all or part of the sentence that was suspended at the time of initial sentencing.” Ind. Code § 35-38-2-3(g) (2004 & Supp. 2007).

In addressing Collins’s argument, we observe that suspension from the sex offender treatment program is not a minor violation of probation. In addition to that violation, Collins’s remaining violations demonstrate an unwillingness to abide by the terms of his probation.¹ Accordingly, we conclude that the trial court did not abuse its discretion when it ordered him to serve his previously suspended four-year sentence in the Department of Correction.

Conclusion

The State presented sufficient evidence to establish that Collins committed four probation violations, and the trial court did not abuse its discretion when it ordered him to serve his previously suspended four-year sentence in the Department of Correction

Affirmed.

MAY, J., and VAIDIK, J., concur.

¹ In support of his argument, Collins emphasizes the trial court’s inaccurate statement that this was not Collins’s first violation. The trial court was referring to Collins’s prior act of videotaping his daughter. However, the trial court corrected itself and later referred to that incident as the first allegation. Tr. p. 76. The court also inaccurately stated that Collins was a “child solicitor.” Given his probation violations, particularly his suspension from the sex offender treatment program, we cannot conclude that this inaccurate statement requires reversal of Collins’s sentence.